IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.12.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE S.K. KRISHNAN

Writ Petition Nos.10691, 10692 and 30004 of 2003
and WPMP.Nos.13504, 13505 and 36618 of 2003

1. Union of India
   rep. by the Department of Posts
   Ministry of Communication
   Dak Bhavan, New Delhi 1.

2. The Chief Postmaster General
   Tamil Nadu Circle, Chennai 2.

3. The Senior Accounts Officer (Pension)
   The Director of Postal Accounts
   Tamil Nadu Circle, Chennai 8.

4. The Director
   Foreign Post, Department of Posts
   Chennai 1. .. Petitioners in WP.Nos.10691 and 10692 of 2003.

1. The Comptroller and Auditor General
   of India, No.10, Bahadur Shah Zafar Marg
   New Delhi 2.

2. Principal Accountant General (A&E)
   No.261 Anna Salai
   Tamil Nadu
   Chennai 600 018. .. Petitioners in WP.30004/03

vs.

1. V.S. Swaminathan .. R.1 in WP.10691 of 2003

2. T. Ramanujam .. R.1 in WP.10692 of 2003
3. S. Ramanan .. R.2 in WP.30004 of 2003.

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4. The Registrar
   Central Administrative
   Tribunal, Madras Bench
   Chennai. .. R1 in WP.30004 of 2003
   R2 in WP.10691 & 10692 of 2003

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the Records pertaining to O.A.Nos.340 & 341/2002 and 1139/02 on the file of the Central Administrative Tribunal, Madras Bench (R2 in WP.10691 & 10692/03 and R1 in EP.30004/03) to quash the order dated 27.9.2002 and 9.4.2003 passed by the 2nd Respondent Tribunal in O.A.340 & 341/2002 and 1139/2002 and pass such other orders.

For petitioners in Wps.10691& 10692 of 2003. : Mr. R. Santhanam Sr.Central Govt., Standing counsel.

For petitioner in WP.30004 of 2003. : Mr. T. Ravikumar Addl.C.G.S.C.,

For respondent No.1 in WP.10691 and 10692/03. : Mr. R. Yashod Vardhan for Mr. M. Muthupandian

For R.2 in WP.No. 30004 of 2003. : Mr. S. Ratnaswamy

COMMON ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Since the question raised in these writ petitions is one and the same and identical, they are being disposed of by the following common order.

2. The Postal Department, Union of India, aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 29.07.2002 made in O.A.No.340 of 2002, directing the Department to refix the pension by taking qualifying service as 33 years in the case of V.S. Swamninathan, has filed W.P.No.10691 of 2003. Aggrieved by the similar order in the case of one T. Ramanujam, the very same Department has filed W.P.No.10692 of 2003. W.P.No.30004 of 2003, is filed by the Controller and Auditor General of India, New Delhi and Principal Accountant General, Tamil Nadu against the order of the Central Administrative Tribunal dated 09.04.2003 made in O.A.No.1139 of 2002.

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3. V.S. Swaminathan, applicant in O.A.No.340 of 2002, after putting in 31 years of service, applied for voluntary retirement and retired from service on 05.07.1983 and he was granted pension as per Rule 48-A of the Central Civil Services (Pension) Rules (in short "CCS (Pension) Rules") as prevalent at that point of time. Consequent to the amendment of Pension Rules at a later stage, when he approached the Department for recalculating his pension and pay arrears etc., the same was rejected. Hence, he filed O.A.No.340 of 2002 before the Tribunal. The applicant in O.A.No.341 of 2002, viz., T. Ramanujam, after putting in 31 years of service had applied for voluntary retirement and retired from service with effect from 05.07.1983. He was also granted pension as per Rule 48-A of the CCS (Pension) Rules. After introduction of Rule 48-B, he had requested for recalculating his pension and pay arrears, and his request was rejected. Hence, he approached the Tribunal.

4. Before the Tribunal though the Department accepted the length of service and retirement dates of the applicants, however, it is its case that at the time of retirement, since the applicants had put in more than 30 years of service, the same was taken as qualifying service without giving any weightage upto 5 years. It is also the case of the Department that the provisions of Rule 48-B came into existence only on 26.08.1983 and since the applicants had retired from the date which is prior to the said date, they are not entitled to the benefits arising out of Rule 48-B. The Tribunal, after considering Rule 48-B, which was introduced in the Pension Rules, by notification dated 22.10.1983, after finding that both of them would be fully covered by the provisions of that liberalized pension formula applicable to all those persons who were retired from 31.03.1979, directed the Department to refix the pension of the applicants by taking the qualifying service as 33 years and also issued direction for payment of consequential arrears.

5. In the case of S. Ramanan, first respondent in W.P.No.30004 of 2003, the Tribunal following the decision in O.A.Nos.340 and 341 of 2003 of the Tribunal dated 27.09.2002, quashed the impugned letter dated 11.01.2002 in O.A.No.1139 of 2002 and also issued similar direction.

6. Heard the learned Senior Central Government standing counsel as well as the contesting first respondent.

7. The only point for consideration in these writ petitions is, whether the applicants / first respondents are entitled to the benefit of taking the qualifying service as 33 years as per Rule 48-B of the CCS (Pension) Rules?

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8. It is not in dispute that the liberalized Pension formula, viz., Rule 48-B came into existence on 26.08.1983 and all the three applicants had retired prior to the said notification. The Tribunal, after finding that since they had retired from service in the year 1983, they are fully covered by the liberalized pension formula. The Tribunal, arrived at such conclusion on the basis that the liberalized pension formula is applicable to all those persons, who are retired from 31.03.1979. As per the notification dated 26.08.1983 and the subsequent notification dated 22.10.1983, the qualifying service for pension was increased from 30 years to 33 years. According to the applicants, the liberalized formula is applicable to all the Government servants who are retired from service on or after 31.03.1979 and the same is also applicable to the voluntary retirement.

9. At this juncture, the learned counsel appearing for the first respondent has brought to our notice that the Department / petitioners itself filed M.A.No.745 of 2002 in O.A.No.340 of 2002, praying for six months time for implementing the order of the Tribunal expressing some administrative difficulties. The Tribunal, accepting its request, granted extension of time for three months by order dated 01.01.2003 and it was posted for compliance on 02.04.2003. It is also brought to our notice that again when the Miscellaneous Application came up for hearing on 02.04.2003, the Tribunal granted two more weeks for compliance of the order. It is the grievance of the applicants that after seeking time from the Tribunal for implementing the order of the petitioners, the Department has approached this Court and filed the above writ petitions. As said earlier, the crucial aspect to be considered is whether the applicants though retired prior to the notified date, entitled to the liberalized pension formula or not?

10. The learned Senior Central Government Standing counsel appearing for the Department placing reliance on the decision of the Supreme Court in the case of State of U.P. vs. Jogendra Singh reported in 1998 (1) SCC 449, would contend that since the liberalized pension formula came into existence after the retirement of the applicants, they are not entitled to the benefit of the said formula. In the said decision their Lordships in paragraph 3 has concluded,

> "3. ..... All laws, in this sense, are prospective unless they are made retrospective either expressly or by necessary implication. The Amending Act did not make the amendment retrospective. Therefore, persons who retired at a time when the proviso was not on the

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statute book cannot claim the benefit of the proviso. The first respondent having retired prior to the insertion of the proviso in Fundamental Rule 56 (e) cannot claim the benefit of the proviso. "

11. Distinguishing the above decision of the Hon'ble Supreme Court, Mr. Yashod Vardhan, learned counsel appearing for the first respondent very much relied on the subsequent decision of the Supreme Court in the case of V. Kasturi vs. Managing Director, SBI, Bombay reported in 1998 (8) SCC 30. After considering the earliest decision of the Supreme Court, viz., D.S. Nakara vs. Union of India reported in 1983 (1) SCC 305, their Lordships have enumerated the following legal position.

"22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be, entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases.

23. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if

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such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospectively only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander, Head Quarter v. Capt. Biplabendra Chanda and Government of Tamil Nadu vs. K. Jayaraman and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit. "

12. The decision of the Supreme Court in Kasturi's case (1998 (8) SCC 30) has been followed in the subsequent decision in the case of Union of India vs. Dr. Vijayapurapu Subbayamma reported in 2000 (7) SCC 662 wherein their Lordships have settled the following legal position.

"7. .....

(c) Where an employee at the time of retirement is entitled to pension under the relevant Rules, any subsequent amendment to the relevant Rules enhancing pension or conferring additional benefit would be also applicable to him. "

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13. As rightly pointed out by Mr. Yashod Vardhan, Clause (c) referred to above is applicable to the cases on hand. It is clear from Clause (c) that when an employee who is entitled to pension at the time of retirement under the relevant Rules, any subsequent amendment to the relevant Rules enhancing the pension or conferring additional benefit would also be applicable to him. In the light of the categorical pronouncement in V. Kasthuri and

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Dr. Vaidyanathan cases and inasmuch as the said decisions and the conclusion of the Tribunal is in favour of pensioners, we are not inclined to accept the contra argument of the learned counsel for the petitioners.

In the light of our discussion, we do not find any error or infirmity in the impugned orders of the Tribunal. Consequently, all the writ petitions are dismissed. No costs. Connected WPMPs., are also dismissed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

2 cc To Mr.M.Muthupandian, Advocate SR.48037
1 cc To Mr.R.Santhanam, Advocate SR.48224.
1 cc To Mr.S.Retnaswamy, Advocate SR.47981.
1 cc To Mr.T.Ravikumar, Advocate SR.47951.

P.D. Common Order in
W.P.Nos.10691,10692&30004/03

TEJ(CO)
RVL 13.12.2005

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